

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

NICHOLAS JAMES GONZALES,

Plaintiff,

v.

Civ. No. 18-107 JCH/GBW

NEW MEXICO CORRECTIONS
DEPARTMENT, *et al.*,

Defendants.

ORDER DENYING MOTION TO HAVE DEFENDANTS SERVED

This matter is before the Court on Plaintiff's Motion/Application to Have Defendants Served with Summons (and) Complaint. *Doc. 11*. In his Motion, Plaintiff seeks to effectuate service of process on the Defendants. Because Plaintiff is a prisoner proceeding *pro se* and *in forma pauperis*, and his action is brought against prison officials, the Court is obligated to conduct a preliminary screening of the Complaint. *See* 28 U.S.C. § 1915A; 28 U.S.C. § 1915(e)(2). Section 1915A states:

The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. . . . On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(a) and (b). The Court has a similar obligation to screen the complaint when a pro se plaintiff is proceeding without prepayment of fees and costs under 28 U.S.C. § 1915(e)(2):

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

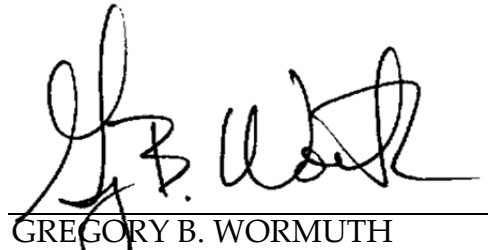
(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

Requests for service of process are premature prior to the Court's completion of its screening obligation. *See Jones v. Bock*, 549 U.S. 199, 213-214 (2007). The Court has not completed screening of Plaintiff's Complaint and will deny Defendant's Motion as premature at this time. If Plaintiff's Complaint is not dismissed on initial screening, the Court will enter further orders governing service of process. *See* 28 U.S.C. § 1915(d) (when plaintiff is granted leave to proceed *in forma pauperis*, the Court is responsible for issuance and service of process).

Wherefore, **IT IS ORDERED** that Plaintiff's Motion/Application to Have Defendants Served with Summons (and) Complaint (*doc. 11*) is **DENIED** as premature.

A handwritten signature in black ink, appearing to read 'G.B. Wormuth', is written over a horizontal line.

GREGORY B. WORMUTH
UNITED STATES MAGISTRATE JUDGE